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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 JAMES EDWARD CURTIS,

10 Plaintiff,

11 v.

12 TERRY J. BENDA, et al.,

13 Defendants.

No. 08-5109 FDB/KLS

ORDER GRANTING DEFENDANTS'
MOTION TO STAY DISCOVERY AND
DIRECTING DEFENDANTS TO FILE
DISPOSITIVE MOTION WITHIN
THIRTY DAYS FROM DATE OF THIS
ORDER

14 Before the Court is Defendants' motion to stay discovery of this matter pending the
15 submission of a dispositive motion. Dkt. 64. For the reasons stated below, the Court finds that
16 the motion should be granted.

17 **PROCEDURAL BACKGROUND**

18 Mr. Curtis claims that Defendants Riley and Benda conspired and fabricated evidence to
19 be used in filing criminal assault charges against him in Clallam County Superior Court on
20 December 3, 2004. Dkt. 4. Plaintiff filed his complaint on February 18, 2008. Dkt. 1.
21 Defendant Riley moved to dismiss the complaint as time barred. Dkt. 11. In response, Mr.
22 Curtis argued that he did not discover the fabricated evidence until he was provided discovery
23 from the state prosecutor on March 4, 2005. Dkt. 26, p. 4. Mr. Curtis also argued that pursuant
24 to *Heck v. Humphrey*, 512 U.S. 477 (1994), his cause of action did not accrue until September 8,
25 2005, when the state prosecutor filed an Amended Information dropping the state criminal
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1 charges against him. *Id.*, p. 7. Defendant Riley conceded that *Heck v. Humprhey* was
2 dispositive on the statute of limitations issue. Dkt. 17. The Court denied the motion to dismiss.
3 Dkt. 19.

4 On April 20, 2009, the Court granted Plaintiff's motion to amend his complaint. Dkt. 43.
5 In his Amended Complaint filed on April 20, 2009, Plaintiff alleges that Defendants Benda and
6 Curtis violated his Fourteenth Amendment right to due process when they provided false
7 information and doctored evidence to the Clallam County authorities which resulted in Plaintiff
8 being charged with a racially motivated hate crime. Dkt. 44. Plaintiff, a white male, admits that
9 he and another inmate, assaulted an African-American inmate. *Id.*, pp. 7-8. However, Plaintiff
10 claims that his involvement in the assault was against his will and he claims that Defendants
11 doctored evidence, including photographs, to make it appear that as part of the assault, the letters
12 "AF" ("Aryan Family") were carved into the victim's back. *Id.* at 8, 16. As a result, Plaintiff was
13 charged with a racially-motivated and gang-related assault. *Id.*, pp. 94-95.

16 Through the course of discovery in this matter, Plaintiff has submitted over 200 requests
17 for production of documents, 25 interrogatories with numerous subparts, and 314 requests for
18 admission to the Defendants. Dkt. 64, Exh. 1. In addition, Plaintiff has filed Motions for Orders
19 enjoining the Clerk to serve subpoenas on the Department of Corrections and the Washington
20 Attorney General's Office seeking additional documents. Dkts. 59 and 60; Dkt. 64, Exh. 2.
21 These proposed subpoenas contain requests for 169 categories of documents. Dkt. 64, Exh. 2.
22 These discovery requests outnumber requests submitted in any of the 57 other cases currently
23 being litigated by the assistant attorney general in this case, including cases raising multiple
24 constitutional issues at multiple correctional institutions throughout the state. *Id.*

1 Defendants have responded to all 202 requests for production. Dkt. 64, Exh. 1.
2 Defendants have also responded to nine of the interrogatories, including all subparts. *Id.* The
3 remaining discovery requests are currently pending. *Id.*

4 DISCUSSION

5 The court has broad discretionary powers to control discovery. *Little v. City of Seattle*,
6 863 F.2d 681, 685 (9th Cir. 1988). Upon showing of good cause, the court may deny or limit
7 discovery. Fed. R. Civ. P. 26(c). A court may relieve a party of the burdens of discovery while
8 a dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989), amended at
9 906 F.2d 465 (9th Cir. 1990) *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984).

11 Defendants argue that the only issue raised is whether or not they violated Plaintiffs
12 Fourteenth Amendment right to due process when they provided information to Clallam County
13 authorities which resulted in Plaintiff being charged with a racially motivated hate crime. Dkt.
14 64, p. 1. While it is not clear from their motion, the Court assumes that the government officials
15 wish to raise the issue of qualified immunity. If that is the case, discovery should not proceed
16 until this threshold issues is resolved by the court. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102
17 S. Ct. 2727, 2738 (1982); *Anderson v. Creighton*, 483 U.S. 635 646 n. 6, 107 S. Ct. 3034, 3042
18 n. 6 (1987), *DiMartini v. Ferrin*, supra, 889 F.2d at 926. The Harlow qualified immunity
19 standard is meant to protect public officials from the broad-ranging discovery that can be
20 peculiarly disruptive of effective government. *Harlow*, 457 U.S.at 817. For this reason, the
21 Court has emphasized that qualified immunity questions should be resolved at the earliest
22 possible stage of litigation, with a court first determining whether the acts defendants are alleged
23 to have taken are actions that a reasonable official could have believed lawful. *Anderson*, 483
24 U.S. at 646 n. 6. If they are not, and if the actions the defendants claim they took are different
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1 from those the plaintiffs allege (and are actions that a reasonable official could have believed
2 lawful), then discovery may be necessary before a motion for summary judgment on qualified
3 immunity grounds can be resolved. *Id.*

4 The Court agrees that the appropriate course where immunity issues are raised is to stay
5 all further discovery until the immunity issues are resolved or it is determined that limited
6 discovery may be required.

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8 Given the early stages of this litigation—an amended complaint was just filed four months
9 hence and the amount of discovery already propounded and anticipated—the Court finds that a
10 stay pending the submission of a dispositive motion is warranted. All discovery shall be stayed
11 pending the filing of a dispositive motion by the Defendants.

12 Accordingly, it is **ORDERED**:

13 (1) Defendants shall file a dispositive motion within thirty (30) days from the date of
14 this Order.

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16 (2) All discovery in this matter shall be **STAYED** pending further order of this Court,
17 including Plaintiff's motions for orders to serve subpoenas (Dkts. 59 and 60) and motion to
18 compel (Dkt. 63).

19 (3) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.

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21 DATED this 4th day of September, 2009.

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25 Karen L. Strombom
26 United States Magistrate Judge